

112TH CONGRESS  
1ST SESSION

# S. 1409

To intensify efforts to identify, prevent, and recover payment error, waste, fraud, and abuse within Federal spending.

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## IN THE SENATE OF THE UNITED STATES

JULY 22, 2011

Mr. CARPER (for himself, Ms. COLLINS, Mr. LIEBERMAN, and Mr. BROWN of Massachusetts) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

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## A BILL

To intensify efforts to identify, prevent, and recover payment error, waste, fraud, and abuse within Federal spending.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Improper Payments  
5 Elimination and Recovery Improvement Act of 2011”.

6 **SEC. 2. DEFINITION.**

7 In this Act, the term “agency” means an executive  
8 agency defined under section 105 of title 5, United States  
9 Code.

1 **SEC. 3. IMPROVING THE DETERMINATION OF IMPROPER**  
2 **PAYMENTS BY FEDERAL AGENCIES.**

3 (a) IN GENERAL.—The Director of the Office of  
4 Management and Budget shall on an annual basis—

5 (1) identify a list of high-priority Federal pro-  
6 grams for greater levels of oversight and review—

7 (A) in which the highest dollar value or  
8 majority of governmentwide improper payments  
9 occur; or

10 (B) for which there is a higher risk of im-  
11 proper payments;

12 (2) in coordination with the agency responsible  
13 for administering the high-priority program—

14 (A) establish semi-annual or quarterly tar-  
15 gets and actions for reducing improper pay-  
16 ments associated with each high-priority pro-  
17 gram; or

18 (B) if such targets are in effect on the  
19 date of enactment of this Act, establish supple-  
20 mental targets; and

21 (3) determine the entities that have received the  
22 greatest amount of improper payments (or, if im-  
23 proper payments are identified solely on the basis of  
24 a sample, the entities that have received the greatest  
25 amount of improper payments in the applicable sam-  
26 ple).

1 (b) REPORT ON HIGH-DOLLAR IMPROPER PAY-  
2 MENTS.—

3 (1) IN GENERAL.—Subject to Federal privacy  
4 policies and to the extent permitted by law, each  
5 agency on a quarterly basis shall submit to the In-  
6 spector General of that agency, and make available  
7 to the public (including availability through the  
8 Internet), a report on any high-dollar improper pay-  
9 ments identified by the agency.

10 (2) CONTENTS.—Each report under this sub-  
11 section—

12 (A) shall describe—

13 (i) any action the agency—

14 (I) has taken or plans to take to  
15 recover improper payments; and

16 (II) intends to take to prevent  
17 future improper payments; and

18 (B) shall not include any referrals the  
19 agency made or anticipates making to the De-  
20 partment of Justice, or any information pro-  
21 vided in connection with such referrals.

22 (3) AVAILABILITY OF INFORMATION TO INSPEC-  
23 TOR GENERAL.—Paragraph (2)(B) shall not prohibit  
24 any referral or information being made available to  
25 an Inspector General as otherwise provided by law.

1           (4) ASSESSMENT.—After the review of each re-  
2 report under this subsection, the Inspector General  
3 shall—

4                   (A) assess the level of risk associated with  
5 the applicable program and the quality of the  
6 improper payment estimates and methodology  
7 of the agency;

8                   (B) determine the extent of additional  
9 oversight or financial controls warranted to  
10 identify and prevent improper payments; and

11                   (C) provide the head of the agency with  
12 any recommendations, for modifying any plans  
13 of the agency, including improvements for im-  
14 proper payments determination and estimation  
15 methodology.

16 (c) IMPROVED ESTIMATES.—

17           (1) IN GENERAL.—Not later than 180 days  
18 after the date of enactment of this Act, the Director  
19 of the Office of Management and Budget shall pro-  
20 vide guidance to agencies for improving the esti-  
21 mates of improper payments under the Improper  
22 Payments Information Act of 2002 (31 U.S.C. 3321  
23 note).

24           (2) GUIDANCE.—Guidance under this sub-  
25 section shall—

1 (A) strengthen the estimation process of  
2 agencies by reviewing the underlying validity of  
3 payments to ensure amounts being billed are  
4 proper; and

5 (B) include—

6 (i) access to more complete data as  
7 part of reviews;

8 (ii) ending reliance on self-reporting  
9 of improper payments as a replacement for  
10 estimates, and relying on the development  
11 of a robust process to estimate and iden-  
12 tify improper payments across the agency;

13 (iii) all overpayments in the improper  
14 payments estimate, regardless of whether  
15 improperly paid funds have been or are  
16 being recovered;

17 (iv) ensuring that—

18 (I) the review of payments to em-  
19 ployees shall include analysis of em-  
20 ployee data, including pay grade data,  
21 locality pay, and other factors that af-  
22 fect pay; and

23 (II) reviews address high-risk or  
24 high-dollar personnel payments, in-

1 including travel, pay, and purchase  
2 cards;

3 (v) reassessing high-risk programs to  
4 better reflect the unique processes, proce-  
5 dures, and risks of improper payments, in-  
6 cluding assessments for each program to  
7 reflect different risk components and bet-  
8 ter direct corrective actions; and

9 (vi) confirming that inter-agency  
10 transfers are proper using a methodology  
11 comparable to that used to assess program  
12 level improper payments.

13 **SEC. 4. IMPROPER PAYMENTS INFORMATION.**

14 Section 2(a)(3)(A)(ii) of the Improper Payments In-  
15 formation Act of 2002 (31 U.S.C. 3321 note) is amended  
16 by striking “with respect to fiscal years following Sep-  
17 tember 30th of a fiscal year beginning before fiscal year  
18 2013 as determined by the Office of Management and  
19 Budget” and inserting “with respect to fiscal year 2014  
20 and each fiscal year thereafter”.

21 **SEC. 5. DO NOT PAY INITIATIVE.**

22 (a) PREPAYMENT AND PREAWARD PROCEDURES.—  
23 (1) IN GENERAL.—Each agency shall review  
24 prepayment and preaward procedures and ensure  
25 that a thorough review of available databases with

1 relevant information on eligibility occurs to deter-  
2 mine program or award eligibility and prevent im-  
3 proper payments before the release of any Federal  
4 funds, to the extent permitted by law.

5 (2) DATABASES.—At a minimum, each agency  
6 shall, before payment and award, check the following  
7 databases (if applicable and permitted by law) to  
8 verify eligibility:

9 (A) The Death Master File of the Social  
10 Security Administration.

11 (B) The General Services Administration's  
12 Excluded Parties List System.

13 (C) The Debt Check Database of the De-  
14 partment of the Treasury.

15 (D) The Credit Alert System or Credit  
16 Alert Interactive Voice Response System of the  
17 Department of Housing and Urban Develop-  
18 ment.

19 (E) The List of Excluded Individuals/Enti-  
20 ties of the Office of Inspector General of the  
21 Department of Health and Human Services.

22 (b) DO NOT PAY LIST.—

23 (1) ESTABLISHMENT.—There is established the  
24 Do Not Pay List which shall consist of—

1 (A) the databases described under sub-  
2 section (a)(2); and

3 (B) any other database designated by the  
4 Director of the Office of Management and  
5 Budget in consultation with agencies.

6 (2) OTHER DATABASES.—In making designa-  
7 tions of other databases under paragraph (1)(B), the  
8 Director of the Office of Management and Budget  
9 shall consider—

10 (A) any database that assists in preventing  
11 improper payments; and

12 (B) the database of incarcerated individ-  
13 uals established under subsection (f).

14 (3) ACCESS AND REVIEW BY AGENCIES.—For  
15 purposes of identifying and preventing improper  
16 payment, each agency shall have access to, and use  
17 of, the Do Not Pay List to determine payment or  
18 award eligibility when the Director of the Office of  
19 Management and Budget determines the Do Not  
20 Pay List is appropriately established for the agency.

21 (4) PAYMENT OTHERWISE REQUIRED.—When  
22 using the Do Not Pay List, an agency shall recog-  
23 nize that there may be circumstances under which  
24 the law requires a payment or award to be made to

1 a recipient, regardless of whether that recipient is on  
2 the Do Not Pay List.

3 (c) DATABASE INTEGRATION PLAN.—Not later than  
4 60 days after the date of enactment of this Act, the Direc-  
5 tor of the Office of Management and Budget shall provide  
6 to the Congress a plan for—

7 (1) inclusion of other databases on the Do Not  
8 Pay List;

9 (2) to the extent permitted by law, agency ac-  
10 cess to the Do Not Pay List; and

11 (3) the multilateral data use agreements de-  
12 scribed under subsection (e).

13 (d) INITIAL WORKING SYSTEM.—

14 (1) ESTABLISHMENT.—Not later than 90 days  
15 after the date of enactment of this Act, the Director  
16 of the Office of Management and Budget shall es-  
17 tablish a working system for prepayment and  
18 preaward review that includes the Do Not Pay List  
19 as described under this section.

20 (2) INITIAL SYSTEM.—The working system es-  
21 tablished under paragraph (1)—

22 (A) may be located within an appropriate  
23 agency;

24 (B) shall include not less than 3 agencies;

1 (C) shall include fraud and improper pay-  
2 ments detection through predictive modeling  
3 and other analytic technologies and other tech-  
4 niques; and

5 (D) may provide for the use of commercial  
6 database sources, commercial analysis, and  
7 other functionality for payment or award re-  
8 views, as determined appropriate by the Direc-  
9 tor of the Office of Management and Budget  
10 for verifying Federal data.

11 (3) APPLICATION TO ALL AGENCIES.—Not later  
12 than January 1, 2013, each agency shall review all  
13 payments and awards for all programs of that agen-  
14 cy through the system established under this sub-  
15 section.

16 (e) MULTILATERAL DATA USE AGREEMENTS.—

17 (1) IN GENERAL.—Not later than 60 days after  
18 the date of enactment of this Act, the Director of  
19 the Office of Management and Budget shall develop  
20 a plan to establish a multilateral data use agreement  
21 authority to carry out this section, including access  
22 to databases such as the New Hire Database under  
23 section 453(j) of the Social Security Act (42 U.S.C.  
24 653(j)).

25 (2) GENERAL PROTOCOLS AND SECURITY.—

1 (A) IN GENERAL.—The multilateral data  
2 use agreements shall be consistent with proto-  
3 cols to ensure the secure transfer and storage  
4 of any data provided to another entity or indi-  
5 vidual—

6 (i) under the provisions of, or amend-  
7 ments made by, this section; and

8 (ii) consistent with applicable informa-  
9 tion, privacy, security, and disclosure laws,  
10 including—

11 (I) the regulations promulgated  
12 under the Health Insurance Port-  
13 ability and Accountability Act of 1996  
14 and section 552a of title 5, United  
15 States Code; and

16 (II) subject to any information  
17 systems security requirements under  
18 such laws or otherwise required by the  
19 Director of the Office of Management  
20 and Budget.

21 (B) CONSULTATION.—The Director of the  
22 Office of Management and Budget shall consult  
23 with—

1 (i) the Council of Inspectors General  
2 on Integrity and Efficiency before imple-  
3 menting this paragraph; and

4 (ii) the Secretary of Health and  
5 Human Services, the Social Security Ad-  
6 ministrator, and the head of any other  
7 agency, as appropriate.

8 (f) DEVELOPMENT AND ACCESS TO A DATABASE OF  
9 INCARCERATED INDIVIDUALS.—

10 (1) IN GENERAL.—The Attorney General shall  
11 develop and maintain a database of individuals in-  
12 carcerated at Federal and State facilities.

13 (2) AVAILABILITY AND UPDATE.—The database  
14 developed under this subsection shall be—

15 (A) available to agencies to carry out this  
16 section and prevent waste, fraud, and abuse;  
17 and

18 (B) updated no less frequently than on a  
19 weekly basis.

20 (g) PLAN TO IMPROVE THE SOCIAL SECURITY AD-  
21 MINISTRATION DEATH MASTER FILE.—

22 (1) ESTABLISHMENT.—In conjunction with the  
23 Commissioner of Social Security and in consultation  
24 with stakeholders and the States, the Director of the  
25 Office of Management and Budget, shall establish a

1 plan for improving the quality and timeliness of  
2 death data maintained by the Social Security Ad-  
3 ministration, including death information reported to  
4 the Commissioner under section 205(r) of the Social  
5 Security Act (42 U.S.C. 405(r)).

6 (2) ACTIONS UNDER PLAN.—The plan estab-  
7 lished under this subsection shall include actions  
8 agencies are required to take to—

9 (A) increase the quality and frequency of  
10 access;

11 (B) achieve a goal of at least daily access  
12 as appropriate; and

13 (C) provide for all States to use modern,  
14 electronic means for providing data.

15 (3) REPORT.—Not later than 120 days after  
16 the date of enactment of this Act, the Director of  
17 the Office of Management and Budget shall submit  
18 a report to Congress on the plan established under  
19 this subsection, including recommended legislation.

20 **SEC. 6. IMPROVING RECOVERY OF IMPROPER PAYMENTS.**

21 (a) IN GENERAL.—The Director of the Office of  
22 Management and Budget shall determine—

23 (1) current and historical rates and amounts of  
24 recovery of improper payments (or, in cases in which  
25 improper payments are identified solely on the basis

1 of a sample, recovery rates and amounts estimated  
2 on the basis of the applicable sample), including spe-  
3 cific information of amounts and payments recovered  
4 by recovery audit contractors; and

5 (2) targets for recovering improper payments,  
6 including specific information on amounts and pay-  
7 ments recovered by recovery audit contractors.

8 (b) RECOVERY AUDIT CONTRACTOR PROGRAMS.—

9 (1) ESTABLISHMENT.—Not later than 90 days  
10 after the date of enactment of this Act, the Director  
11 of the Office of Management and Budget shall es-  
12 tablish a plan for no less than 10 Recovery Audit  
13 Contracting programs for the purpose of identifying  
14 and recovering overpayments and underpayments in  
15 10 agencies.

16 (2) REVIEW OF COMMERCIAL PAYMENTS.—Of  
17 the programs established under this subsection, 5  
18 programs shall review commercial payments by an  
19 agency.

20 (3) DURATION.—Any program established  
21 under this subsection shall terminate not more than  
22 3 years after the date on which the program is es-  
23 tablished.

24 (4) REPORTS.—

1           (A) IN GENERAL.—Not later than 3  
2 months after the completion of a program, the  
3 head of the agency conducting the program  
4 shall submit a report on the program to Con-  
5 gress.

6           (B) CONTENTS.—Each report under this  
7 paragraph shall include—

8                   (i) a description of the impact of the  
9 program on savings and recoveries; and

10                   (ii) such recommendations as the head  
11 of the agency considers appropriate on ex-  
12 tending or expanding the program.

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